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ABSTRACT

Intended for federal, state, and local policymakers, the document looks at the actual policies and practices of local and state education agencies in carrying out their minimum competency requirements, with particular emphasis on the mandates of P.L. 94-142 (the Education for All Handicapped Children Act) and Section 504 of the Rehabilitation Act of 1973. Findings from a survey of 20 states and federal agencies and national organizations representing handicapped students are reviewed for the following areas: inclusion or exclusion of handicapped students, applicability of federally required evaluation and placement standards to minimum competency programs, individualized education programs and minimum competency programs, remediation and reevaluation for handicapped students failing competency tests, and minimum competency testing as a graduation requirement for handicapped students. Listed among findings are that minimum competency programs neither universally exempt handicapped students from their testing requirements, nor assure them the opportunity to participate in programs; that several states tie minimum competency testing to high school graduation; and that local organizations of parents of handicapped children have not yet surfaced their concerns regarding minimum competency programs in any systematic way. (SBH)

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MINIMUM COMPETENCY TESTING PROGRAMS AND HANDICAPPED STUDENTS: PERSPECTIVES ON POLICY AND PRACTICE

Ann Rosewater

The Education of the Handicapped Policy Project

INSTITUTE FOR EDUCATIONAL LEADERSHIP

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June 1979
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In 1977, as a free-lance writer/researcher, Ann Rosewater co-authored a report on Title I, Fundamentals for Equity in Federal Education Policy for the Education Coalition. In the same year, Ms. Rosewater was the principle investigator at the Center for Community Change for a federally funded study entitled, Possibilities for Use of Federal Funds to Increase Accessibility for the Disabled: A Strategy for the Community Services Administration.

Presently, Ms. Rosewater is a member of Congressman George Miller's (D-Cal.) staff where she specializes on issues relating to all human resources programs.

PREFACE

Minimum competency testing programs have been discussed at length over the past decade. Debate continues as more states put these programs into operation. As important at this stage, however, is a careful examination of the implementation process and its effects. This paper discusses one aspect of that implementation on a particular group of students--those with handicapping conditions.

Initial questions about the application of minimum competency testing to handicapped students raised in papers by Center for Law and Education staff attorneys Merle McClung and Diana Pullin and by the American Friends Service Committee's Southeastern Public Eduation Program in the Spring of 1978 stimulated the research on which this paper is based (see footnotes 3 and 31). Little was known about whether these statewide programs explicitly included or excluded handicapped students, whether any thought had been given to these students in adoption of broad competency testing policy, or what the states were doing to cover these students as they implemented their policies. Beyond the issue of whether handicapped children were or were not to be included, questions were still being formulated about how new federal and state law protecting handicapped students might affect the competency testing policy itself.

As a result, the Education of the Handicapped Policy Project of the Institute for Educational Leadership asked Ann Rosewater to find out what was happening in the states as they implemented competency testing laws and how the derivative policies and procedures would affect handicapped students. Rosewater's paper implicitly raises many general questions about the policy formulation and implementation process and handicapped students. It documents that little attention has been paid to the possible impact on handicapped students despite more broad acknowledgement of the needs of these students and new law which protects them. Her work goes considerably and importantly beyond this point and raises the policy questions and issues which must be considered in this complex area of policy overlap--the interaction between state general testing and programming policy--in this case, minimum competency testing--and federal and state rights protections for handicapped children. In describing the issues which must be addressed, the paper documents what has occurred, the questions policymakers must address and answer, and the next steps which must be taken if handicapped students are to be assured of the protections new law has granted them.

Policies regarding minimum competency testing and the protection of handicapped students confront each other on three major issues: the right of the handicapped child to participate in all programs and benefits offered their non-handicapped peers; the individualization of the educational process; and the involvement of handicapped students in programs in the mainstream of our public educational system. And, although our attention has been drawn to competency testing, it is one part of a larger issue which must be addressed--grading, testing and graduate requirements--for handicapped students. While those broader issues have not been examined in depth here, the paper frames those issues and refers the reader to other work.

This paper is offered as a resource for federal, state and local policymakers as they move forward in the implementation of minimum competency testing programs. We hope that it will stimulate discussion and resolution of the critical issues raised.

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MINIMUM COMPETENCY TESTING PROGRAMS AND HANDICAPPED STUDENTS: PERSPECTIVES ON POLICY AND PRACTICE

INTRODUCTION

During the past few years, 36 states have responded with legislation or state board rulings to a widespread public perception that unacceptably large numbers of students graduate from high school without mastering the basic skills necessary to function productively in the adult world. These responses have resulted in the creation of "minimum competency" programs for students. Despite considerable variation in the way programs are structured and in where responsibility for implementation lies, most minimum competency programs have been designed to include: (1) the determination of a set of skills which students should master by some appointed time in their school career; (2) the identification of existing, or development of new, tests to measure students' mastery of those skills; (3) the assignment of standards, usually expressed as test scores, to judge whether students have achieved proficiency in the minimum set of skills; and (4) a connection between mastery of the specified minimum skills and promotion from one grade to another or graduation from high school. Some states also provide remedial opportunities in the event a student fails a competency test.

Concurrent with the initiation by states of minimum competency testing programs, recent federal law compels all states to adhere to new requirements for all students with disabilities which include: (1) provision of a free appropriate public education in the least restrictive environment 1/; and (2) prohibition against discrimination on the basis of a disability in any federally assisted program. 2/ As a consequence of the two parallel developments, states and localities are putting into effect new policies to protect handicapped children and, at the same time, establishing minimum competency programs which may result in denying handicapped children certain rights.

As minimum competency programs have swept the country, public attention has focussed almost exclusively on "regular students". The concept of minimum competencies for handicapped students has received little attention. While such a concept may or may not be beneficial to improving handicapped students' education, one cannot assume that minimum competency programs designed for non-handicapped students are appropriate for handicapped students. As used in this paper, the term "minimum

competency" refers to programs originally conceived and mandated primarily to respond to concerns about the skills of non-handicapped students. The literature is scant on the actual application and impact of the new standards on handicapped children. 3/ This study explores how the states apply minimum competency programs to students with disabilities and identifies dilemmas arising from state policy and practice in the context of federal law.

ABOUT THIS STUDY

During the latter half of August and September 1978, the author obtained documents pertaining to competency programs and handicapped students from 20 states 4/, and in 10 of those states 5/ conducted extensive telephone interviews with state and local officials. To gain an adequate understanding of what the law or state education agency regulations included vis-a-vis handicapped children it was frequently necessary to interview more than one person in a state education department: one connected to the competency testing program and one in a division of special education. In addition, relevant federal agencies and national organizations representing handicapped students were surveyed to determine their familiarity with the issues and to acquire any policies they had adopted with regard to the applicability of state competency programs to this group of children. Subsequently, in February 1979, the National Association of State Directors of Special Education (NASDSE) issued "Competency Testing, Special Education and the Awarding of Diplomas: A report of Survey Information Collected by the National Office and the North Carolina Department of Public Instruction Division of Exception Children". This survey represents responses to six questions from 54 state directors of special education. 6/

The analysis which follows relies on summary information about state law or board policy from the NASDSE survey and highlights additional information about state and local practice gathered from the interviews.

POLICY ISSUES POSED BY THE APPLICATION OF MINIMUM COMPETENCY TESTING PROGRAMS TO HANDICAPPED STUDENTS

Establishment of minimum competency programs risks conflict with recent legal protections for students with disabilities. Mandates to assure appropriate educational programming for students with special needs implicitly and explicitly assume that each student's needs require separate examination and evaluation and that programming and goals should be individualized as well. 7/ In contrast, competency programs imply that all students should meet a uniform set of minimum standards and be evaluated through a uniform assessment instrument.

Questions may be raised also about minimum competency programs and a second basic principle embodied in the Education for All Handicapped Children Act and section 504 of the Rehabilitation Act of 1973: both academic and non-academic services for students with special needs are to be provided as much as possible in settings with non-handicapped students. 8/ "Mainstreaming" reflects a belief that each handicapped student may be able to participate to some lesser or greater extent in regular educational activities and programs with their non-handicapped peers, and that separate classes and programs have not benefitted students with special needs but have isolated them and made them "different". Use of minimum competency tests to separate students who have mastered the required skills from those who have not, to place students in remedial courses, or to identify students for retention or separate exit documents, risks reestablishing tracking systems as an acceptable educational strategy.

The following analysis examines in more depth areas of state and local policy and practice in the application of minimum competency programs to children with disabilities.

Inclusion or Exclusion of Handicapped Students

Competency testing programs concentrate primarily on "regular" students. Decisionmakers who set up the programs generally assume that all students should be able to master certain skills. 9/ According to the NASDSE survey, "six states indicated that all or designated handicapped students are required to take the mandated test". 10/ However, in many states, certain groups of students have been granted exemptions, waivers or adjustments. Sometimes the students receiving special treatment are defined as "handicapped".

Use of exemptions poses a fundamental legal question. Section 504 of the Rehabilitation Act of 1973 prohibits handicapped students from being denied the opportunity to participate in activities available to non-handicapped students. Several states automatically exclude the broad category of handicapped students. Very few states make an affirmative statement assuring the opportunity to participate, or establish a process for deciding to exclude, rather than include, a student in the testing process. 11/ A careful decision to exclude a student should probably trigger the notification requirements of both Section 504 and P.L. 94-142, thereby informing parents of the upcoming tests and opening the decision process to some parental voice.

Other states exclude specific categories of students with disabilities. P.L. 94-142 and Section 504, however, oblige that appropriate education services for a child be decided on the basis of individual special needs rather than on the basis of a label or disability group. The laws spell out procedures which school systems must follow before determining that a special educational program is necessary. Yet, even those state minimum competency programs which refer to the Individualized Education Program (IEP) or P.L. 94-142 procedural protections as the basis for determining inclusion or adjustments for handicapped children provide little guidance on how or when to use the protections or which aspects might be relevant.

Exemptions, waivers and adjustments for selected categories of handicapped students may penalize minority students disproportionately. Recent challenges to disability categories and labels on the basis of their non-uniform definitions and application and their history of misclassification of poor and minority children have led to successful legislative and court action to remove children from isolated special education programs (generally EMR) and return them to regular classes. 12/ However, the definition of "specific learning disabilities" used in the Education for All Handicapped Children Act, excludes from its reach students who have learning problems stemming from environmental, cultural or economic factors. Thus, reclassified minority students may be deprived of needed auxiliary services. 13/ As a result, many minority students whose educational program had for long been deficient will not be exempted from minimum competency tests because they are no longer categorized as "retarded", but neither will they be entitled to the adjustments provided other handicapped students.

Few state programs address the availability of required minimum competency testing for students located outside

public school settings. Maryland, which excludes handicapped students based on the nature of their placement rather than the nature of their disability, appears to exclude automatically youngsters in residential, institutional or correctional facilities. In North Carolina, pupils in schools within the State Department of Corrections and the Division of Youth Services are included in the state's program, where procedural modifications are emphasized in lieu of exemptions.

Applicability of Federally-Required Evaluation and Placement Standards to Minimum Competency Programs

One set of criteria for determining the appropriateness of minimum competency programs for use with handicapped students may be drawn from the regulations implementing P.L. 94-142 and Section 504. These regulations spell out evaluation and placement procedures required for a student identified as possibly needing special education services.

Because a "basic test" (in contrast to a diagnostic test) is considered largely inadequate for assessing an individual student's special education needs, P.L. 94-142 regulations specifically exempt "basic tests administered to or procedures used with all children in a school, grade or class" from the definition of evaluation. 14/ However, Section 504 obligates school officials to conduct certain procedures "before taking any action with respect to the initial placement of the person in a regular or special education program and any subsequent significant change in placement". 15/

On the face of it, minimum competency tests appear to fall within the category of "basic test". However, if minimum competency tests or decisions made on the basis of those tests trigger assignments to remedial classes or are included among the basic "objective criteria and evaluation procedures" included in an IEP for purposes of assessing the adequacy of the program prior to a possible "change in placement", then closer adherence to the regulations may be necessary.

Further, in those states which will provide services to handicapped students through age 21 after September, 1980, graduation or awarding of a certificate removing the student from his/her individual program may also constitute a "change in placement". If the graduation or awarding of the certificate is tied to minimum competency test results, the applicability of federal evaluation criteria must be considered.

The real question is not whether a minimum competency test constitutes evaluation, but whether the results from such a test are used as the basis of a decision to make a change in placement or program for a child. To the extent that minimum competency programs fall within the scope of federal regulations, policymakers must scrutinize the programs--tests as well as decision processes--against several basic standards. As is shown below, these standards call into question the selection and administration of the tests as well as the use of the test results.

(1) Minimizing racial and cultural bias 16/

The Education for All Handicapped Children Act incorporated a prohibition against racially and culturally discriminatory tests, reflecting litigation which successfully challenged tests having an adverse impact on minority and limited English-speaking students.

Minimum competency test results available, notably in Florida and North Carolina, demonstrate that minority students generally fare poorly and handicapped students have a very low success rate. 17/ The disproportion in minority student placement in certain special education categories (EMR, Emotionally Disturbed) may compound the negative impact of minimum competency tests for minority handicapped students participating in the testing program. 18/ Consequently, state testing programs should be able to show, at the least, that tests developed or approved for use in student accountability programs have no history of adverse impact on minority or non-English-speaking students. In addition, the process by which a decision is made to change a student's placement also must remain as free of bias as the competency test which is part of it.

(2) Standardized administration of valid tests 19/

This standard incorporates two concerns: (a) the procedures for selecting and administering tests, and (b) the validity of tests.

Validity is a measure of the accuracy of a test to predict an external fact and is specific to the thing to be predicted, the circumstances of the administration of the test, the persons to be tested, as well as the test itself. Two aspects of the doctrine of validation, enunciated first with regard to minority applicants for employment 20/, were incorporated into both Section 504 and P.L. 94-142 regulations. First, many tests actually describe for whom the test is valid and specify groups of individuals for whom the test is not applicable. This

explanation protects test publishers from responsibility for disparate results of the test when it is selected or administered indiscriminately by a school district. If the test has a disproportionate impact on a specific group, such as minority or handicapped students, the burden of proving the efficacy of the test shifts to the school system using the test. Since the numbers of handicapped students taking the test in any one school district may be small, a school system may be required to compare the efficacy of the test on students in its own district against a larger population of handicapped students.

Many states and localities have selected for use tests developed by commercial publishers. These publishers usually develop tests to measure specific skills, and validate them for those specific purposes only. Thus, state or school districts using commercially published instruments should adhere to the uses originally intended by the publishers and validated by them. This includes conforming to the instructions provided by the test publisher and using trained personnel to administer the test. If states or localities develop new tests they must be able to demonstrate the process used to validate the test, for whom the test is valid and the specific purposes for which it is valid.

Frequently, something incidental to the test or its administration renders the test invalid for specific groups of handicapped students. States and localitites have an obligation to ascertain that the tests approved or prescribed for use are valid for those handicapped students expected to participate in the testing program. Several state officials surveyed noted that handicapped students rarely have been included systematically in the state's pretesting.

Giving a mathematics test in English to a limited English-speaking student is likely to tell more about the student's ability to read English than his/her ability to calculate and compute. Similarly, many tests selected and administered to handicapped students may reflect more about their disabilities than their ability to perform the substance of the specific test. This standard requires that, to the maximum extent possible, state and local school districts ensure that the tests used are measuring only the specific factors the test purports to measure, rather than a handicapped student's impaired sensory, manual or speaking skills.

The validation issue reaches one step further in those situations where a state or locality has developed procedural modifications or adjustments for specific handicapped

students to improve their ability to take the tests. The modifications may range from large print tests for the visually impaired to "noise buffers" for students with learning disabilities. 21/ But statements of validity or data demonstrating validity of the modifications does not appear to be available. However, if tests are expected to meet the regulations on validation, the adjustments should have the same evidence of efficacy as the regular test. If the regular test has been validated for non-handicapped students but the adjustments for handicapped students have not been validated, the state or locality may be held responsible for providing unequal treatment for handicapped and non-handicapped students.

(3) Tests must assess specific areas of educational need 22/

This standard primarily guards against use of tests producing results, usually in the form of a single summary score, for which no rational connection to the identification of specific areas of educational need can be found. In most states or localities where minimum competency testing is used to determine students' specific skill deficiencies this standard will probably be met with ease.

Development, selection and administration of tests for elementary and secondary school students have become increasingly complex and sophisticated. As a result of the misuse of tests, and the adverse impact of some tests or testing programs on selected groups of students, the criteria which school systems generally must prepare to address are numerous and, to some degree, technical. When tests are developed for a specific group of students, such as handicapped students, on whom limited evaluation has been conducted and the techniques for adjusting or modifying tests untried, leaving considerable flexibility to local districts greatly increases the opportunity for abuse and error and opens the way to misclassification of students.

Further, it is incumbent on states which prescribe or allow for specific modifications, adjustments, or special tests for specific groups of handicapped students to provide substantial guidance to local school districts about the selection and administration of such differential assessment procedures in order to explain the need for fair and objective procedures as well as to avoid technical abuses. The evidence to date suggests that states have not fulfilled this responsibility. States have rarely provided resources or guidance to local districts for developing assessment procedures or modifications of the procedures. 23/ Some state and district

officials also profess that financial cutbacks impede them from making special modifications even if they are permitted or encouraged. 24/ Handicapped students disproportionately feel the impact of this scarce resource mentality.

Individualized Education Programs and Minimum Competency Programs

One component of the "free appropriate public education" mandated by federal law for every handicapped child is the development for each child of a written education program. 25/ This Individualized Education Program (IEP) must contain five components: 1) annual goals and short-term objectives; 2) specific special education services to be provided; 3) date when services should begin and how long they will be continued; 4) the child's present levels of performance; and 5) objective criteria and evaluation procedures to determine if the objectives are being achieved. School districts are required to develop this program in a meeting attended by several people, including the student's parents.

While IEP requirements have been on the books for a few years, 1977-78 was the first school year when all handicapped students were required to have individual programs. Little systematic evaluation of the IEP process has yet been conducted. However, it is widely acknowledged that many school districts have resisted full implementation of this requirement. Allegations that IEPs are "canned", that is, developed according to available resources and disability category rather than individual need, are not uncommon.

IEPs come into play with minimum competency programs in two ways. First, the IEP development process (and thus, the team devising the IEP) may be used to determine if a specific handicapped student should participate in the minimum competency program and what adjustments or modifications are necessary to enable the student to do so equitably. 26/ Second, the requirements of the IEP itself may serve as the alternative standards for promotion or graduation in the event a handicapped student does not participate in the minimum competency program. 27/

Many states allow local school districts flexibility to make decisions on a case by case basis about the participation of handicapped students in minimum competency testing or adjustments individual students may need to enable them to participate. One state gives school principals authority to request a waiver for specific students. 28/ A few states recommend or require the

evaluation team or committee charged with developing IEPs to include this determination in the plan. 29/ However, no states surveyed provide adequate information to guide either principals or evaluation teams about how or when to make such determinations, or on what to base adjustments or differential standards. Even where state officials acknowledge that modifications are necessary and direct local districts to make modifications when appropriate, most members of IEP committees generally lack an understanding of testing measurement. They do not know how to develop differential standards or assessment procedures that are valid and defensible.

Several state and local education officials surveyed for this report identified a critical need for direct "hands-on" training. Without the necessary information and training, there can be little assurance that even the IEP committee will make appropriate or equitable decisions regarding participation of handicapped students in testing programs established for students who are not handicapped. As a result, many school districts given the option to provide differential standards or procedural modifications for selected disabled students are backing away completely from offering adjustments. Ultimately, a district's failure to provide the needed modification for a handicapped student to participate in the testing program may have the effect of totally excluding the handicapped student.

The wording of state law or policy requiring or recommending use of the IEP process has created additional problems in some states. Reference to the IEP process and its use in determining adjustments for handicapped students appears to be only a first step. Some states, such as Massachusetts, require that:

> the application of minimum standards for basic skills competency to students determined to be in need of special education...shall be at the determination of the evaluation team responsible for developing and approving the Individual Educational Plan for each special needs student 30/

But many local officials are interpreting the regulations as if special education students need not be included. This attitude surfaced when a statewide task force, designing a 60-school pilot test for basic competencies, planned to exclude special needs students and thereby exclude them from the aggregate test scores. The Division of Special Education was reported to be recommending a regulation to ensure that each student would be entitled to take the basic competency exams, unless the evaluation team makes a deliberate decision to exclude the child, in

which case some alternative measurement would be required. Listing on the IEP that a student is entitled to take the exam will serve to notify parents that the student has a "right". 31/

Some states have begun to use the IEP not only to determine participation of handicapped students in minimum competency testing programs, but as alternative graduation requirements for students for whom the regular competency test is inappropriate. Vermont uses this approach and it is under consideration in Massachusetts, even though that state has not yet tied basic skills competencies to graduation for non-handicapped students.

Informal reports of uneven implementation of the IEP concept and continued use of "canned" plans also raise serious questions for the use of IEPs as graduation standards. Advocates fear that IEPs frequently reflect more about a disability category and the resources and educational offerings currently available in a school district than about a particular student's needs. Thus, while an evaluation team should know a student well enough to construct a realistic program, many evaluation teams are controlled by school district administrators. An administrator may want to move a student out of school and thus set rather minimal requirements. Or an administrator may resist spending additional money on special needs students and thereby limit the special adjustments available to make the regular minimum competency requirements accessible to them.

Without careful guidance and monitoring and extensive parent training, use of the IEP process to determine exemptions, adjustments and graduation requirements runs the serious risk of "minimum" competencies or skills becoming the maximum required by an IEP. This concern, noted with regard to non-handicapped students, applies to handicapped students as well:

> The use of minimum competency programs may result in a curriculum which will no longer challenge students who are capable of exceeding the "minimum". There are concerns that schools are already doing too little to challenge such students. 32/

Such scaled-down expectations run counter to one of the underlying principles of recent federal laws--promoting expectations of handicapped students comparable to those of non-handicapped students to the maximum degree possible. 33/

Despite potential difficulties with using IEPs, either as criteria for participation or as alternative graduation

standards, some monitors of minimum competency programs judge that "individual needs and circumstances are likely to be a key concern" underlying the legality of competency testing of handicapped students.

> Fair and equal treatment precludes any uniform approach to handicapped students. What is fair for one handicapped student may be unfair for another because individual circumstances vary so greatly. 34/

Remediation and Reevaluation for Handicapped Students Failing Competency Tests

One component of many state minimum competency testing programs requires remediation for students failing part or all of a proficiency test. Many states also allow or require opportunities for retesting so that students may have additional chances to demonstrate their proficiencies before graduation. None of the states examined for this study provide any different regulation or recommendation regarding remediation and retesting for handicapped students than for non-handicapped students. Few states provide supplementary funds to support remediation services for any students.

State programs differ in the nature of the remedial services they provide to students who fail the tests. Some students may be required to participate in remedial work in regular classes or be involved in limited pull-out remedial classes designed to strengthen certain skill deficiencies. However, in some of the states where such remediation is required, special education students receive no "additional" help because, by virtue of their special status, they are already considered to be in remedial classes. The lower pupil-teacher ratio is taken as evidence of a remedial situation and an assumption is made that the special education teacher can provide remediation. Thus, handicapped students in self-contained programs or regular or pull-out classes may or may not receive remediation aimed at correcting the skill deficiencies identified on the minimum competency test. In any case, however, a student's inadequate performance on a minimum competency test should trigger a reexamination and perhaps an amendment of his/her IEP.

Lacking appropriate remediation, opportunities for retesting a student's mastery of certain skills seem rather pointless. While some states have recommended use of the IEP process for the front end determinations of participation in minimum competency programs, they have stopped short of suggesting that failure of the minimum competecy

tests should stimulate review of an IEP or the full-scale periodic reevaluation of special education students required by federal law.

Minimum Competency Testing as a Graduation Requirement for Handicapped Students

Graduation requirements for handicapped students traditionally have been the prerogative of state and local education agencies. NASDSE's survey indicates that 31 states issue regular diplomas to handicapped students. However, 17 states give discretion to local school boards to award regular diplomas to handicapped students and 15 states allow local boards to award special diplomas to handicapped students. Nine states issue special certificates of attendance and 17 states give local boards discretion to issue such certificates. 35/

In states where minimum competency testing is linked to graduation and has an impact on the exit document and status a student can attain, handicapped students may be seriously disadvantaged by the tradition of granting them certificates. Not only may handicapped and non-handicapped students be treated differently in these situations, but different groups of handicapped students may receive different graduation opportunities. For example, in some states certain disabled students can obtain exemptions or waivers from the minimum competency testing program and still receive a diploma. 36/ In those same states, handicapped pupils who were required to take the test might fail it and thus not be eligible for a regular diploma. This experience may be felt most strongly by handicapped students who attend regular classes for some portion of the day and thus are considered able to take a competency test, while students in self-contained classes may be exempt. For reasons described earlier 37/, many of the recently "mainstreamed" students may be minority students previously misclassified or placed into a segregated track after desegregation. The result may include retracking these students into isolated, possibly segregated self-contained classes, as well as preventing them from receiving a graduation diploma. These results hardly conform to the underlying intentions of recent federal law, and potentially violate their mandates.

Neither Section 504 nor P.L. 94-142 address exit policies directly. Regulations implementing each law, however, may prove relevant to determining the legality of state and local graduation practices. The Section 504 implementing regulation states:

> ...aids, benefits and services, to be equally effective, are not required to produce the identical result or level of achievement, but must

> afford handicapped persons equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement... 38/

A high school diploma is an obvious "benefit" of twelve years of schooling which both non-handicapped and handicapped students must have an "equal opportunity to obtain". If a minimum competency test required for high school graduation is understood as inappropriate for certain handicapped students to take, then denying handicapped students regular diplomas on the basis of either failing the test or not participating in the testing seems to contravene Section 504.

The Education for All Handicapped Children Act skirts the graduation issue as well. The entire law and its implementing regulation are framed in terms of initial conditions for education rather than the outcome of the education provided, except to the extent the IEPs are to include annual goals, shortterm instructional objectives and a mechanism to evaluate them. Short of reviewing a student's IEP, the law delineates no end point in a student's school career, nor connects it to any award or penalty except that the child must receive a free education specially designed to meet his/her needs. One might well argue that if the standards of the competency test are expected of the child then his needs include the instruction to pass that test and public responsibility is not ended until such time as the student can pass the test. P.L. 94-142 mandates states and local school districts to extend service to assure educational programs are available for handicapped students through age 21. The design of a state or local minimum competency testing program may deny handicapped students the benefits of this extended service.

Requirements for graduation and diplomas also raise a series of policy questions separate from those raised by minimum competency testing and consequently fall outside the scope of this paper. 39/

SUMMARY AND CONCLUSIONS

Policymakers must ask two fundamental questions: should minimum competency programs mandated for non-handicapped students also apply to handicapped students? If so, how can they be implemented consistent with the requirements of P.L. 94-142 and Section 504? To date, systematic evaluation of handicapped students' achievement in basic skills has been extremely limited. Little information has been gathered which illustrates the cognitive or academic impact of special education programs on handicapped students. Until more broad-scale studies of these

areas are conducted and results are publicly available, it will be difficult to know even the ranges of expectations appropriate for different handicapped students.

Minimum competency tests have not been validated against special education students or their educational programs. Given the difficulty of devising valid measures to begin with, determining the reasons for failure of part or all of a competency test by students with special needs is likely to be quite complicated. Lack of appropriate remediation may be one reason, but the failure may have deeper causes as well. A flawed IEP or an inadequately executed IEP, lack of modification in assessment procedures, or pressures on students to attain beyond their capacity may each contribute to a student's failure of the test.

The following conclusions from this exploratory survey provide some background for policymakers as they consider the complex issues involved in applying minimum competency testing programs to handicapped students:

(1) When state legislatures and boards of education enacted statewide minimum competency requirements there was neither sufficient understanding of the special needs of students with disabilities nor adequate attention paid to these students to prevent developing minimum competency programs which may have adverse and thus, potentially discriminatory effects on them. State education officials did not translate requirements of recent federal and state laws or federal court rulings mandating appropriate education programs for handicapped children to special consideration for handicapped children in minimum competency programs.

(2) Many states allow considerable local discretion in the implementation of the competency testing program; other states retain much of the authority within the state education agency. In the name of respecting local autonomy, states delegated the problem of resolving many complex policy and implementation questions to local education agencies. With rare exceptions, states have provided little guidance to school officials about how to apply minimum competency testing programs to handicapped children and, simultaneously, how to conform to federal laws protecting handicapped students.

(3) Minimum competency programs neither universally exempt handicapped students from their testing requirements, nor assure them the opportunity to participate in the programs. Assessment procedures and standards applied to non-handicapped students may or may not be applied to handicapped students as well. Special accommodations of these procedures and standards are not uniformly available.

(4) States which include handicapped students in their minimum competency programs make various allowances in their test procedures. Three broad strategies of determining how to vary the assessment procedures seem prevalent: (a) specific modification of the assessment procedure according to disability category (e.g. large print or braille versions of the test for visually impaired or blind students, interpreters for deaf students; modifications of the testing conditions or the time needed to complete the test for emotionally disturbed or learning disabled students); (b) reliance on the IEP to identify appropriate modifications on a case by case basis; and (c) total flexibility left to the local districts. In some states and localities, modifications are made available for some categories of handicapped students but not for others. As a result of the discrepancies in access to minimum competency programs, many of these approaches raise serious discrimination and equal protection questions.

(5) Despite the mandate of Section 504 specifically prohibiting recipients of federal funds from denying handicapped students the opportunity to participate in programs and activities available to their non-handicapped peers, very few state programs specify that handicapped students must have the option to participate in minimum competency programs. In states where pilot tests have been conducted, handicapped students generally have been excluded from the sample or "tacked on" as a hasty afterthought. Local discretion has enabled school officials to exclude handicapped students arbitrarily, providing no notification to parents of the exclusion or of handicapped students' right to inclusion in the testing program. None of the states surveyed had developed appeal procedures.

(6) Random, ill-deliberated and discretionary treatment of handicapped students in these programs may result in actual and potential harm to many of them.

--Some disabled students who may be unable to cope with the testing expectation or the testing environment may be included in the testing program automatically and without review. Others who could take the examinations with no problem may be summarily excluded.

--Some students who recently have moved into regular classes as a result of reevaluation generated by new federal or state law or litigation may be required to take the test, regardless of the adequacy of their previous educational program. Because of the heavy overidentification of minority children as mildly handicapped (particularly EMR) and thus conducive to mainstreaming, many of the handicapped

children adversely affected by the testing program may be minority children. If they fail the test, they may be reassigned to separate, potentially racially identifiable, special education classes open to challenge under Title VI of the Civil Rights Act of 1964.

(7) Several states tie minimum competency testing to high school graduation. In those states requiring mastery of specific skills, there is little correlation between the skills tested and the kind of awards--regular diplomas, special diplomas or certificates of attendance--given handicapped students upon completion of high school. In states and localities where completion of minimum competency requirements is tied to high school graduation, and where some handicapped students are exempt from the requirements while others are not, exempted students may be entitled to regular diplomas while those who take and fail the test may receive a different diploma or none at all. A substantial portion of states leave the determination of high school completion awards for handicapped students to local school officials, with little guidance about how their decisions must conform to federal law.

(8) Local organizations of parents of handicapped children have not yet surfaced their concerns regarding minimum competency programs in any systematic way. Their silence may indicate their lack of awareness of the impact of these programs on the education interests of their children, or their judgment that the issue is not significant. In the few states where parents have become involved, their participation usually reflects a last minute effort by a few parents to protect a limited category of handicapped students. As more states enter their first minimum competency testing year, the impact on handicapped students of actual testing will be felt and critical issues may surface in a more immediate way.

(9) Responsible federal officials have not addressed the policy dilemmas occasioned by the intersection of new federal laws protecting the rights of disabled students and state minimum competency testing programs. While one national special education professional organization has taken a preliminary survey, no organization has generated criteria against which to measure whether handicapped children are experiencing illegal discrimination or are enjoying the benefits of minimum competency programs.

NEXT STEPS

Minimum competency programs are taking hold throughout the country. Their application to handicapped students may have a critical impact on these students' educational

and adult lives. Both public and private sector agencies, together, could design and set in motion a variety of activities to raise significantly the visibility of these issues.

To date, federal agencies, professional leadership groups and private interest groups have not taken action on minimum competency testing as it affects handicapped students. In the Department of Health, Education and Welfare, two agencies have taken only initial steps toward addressing these issues. The Office for Civil Rights, through its Director, has underscored the importance of competency testing issues in general and has set in motion some staff work as a prelude toward developing a policy statement. 40/ However, attention has been concentrated on issues raised under Title VI; the impact on handicapped children and policy concerns arising from Section 504 have not been addressed.

The Bureau of Education for the Handicapped has taken no official action to date to offer guidance to state and local education agencies where minimum competency programs have been enacted or are under consideration. Except for a number of articles drafted at the staff level and bearing no agency endorsement 41/, the nexus between The Education for All Handicapped Children Act and minimum competency programs remains unexplored.

Most public interest groups and professional organizations have not moved beyond preliminary stages in addressing the issues that need to be confronted. The National Association of State Directors of Special Education has recently issued a survey of state programs. The Council for Exceptional Children has begun research and has in draft a paper on high school graduation requirements for handicapped students as part of its Policy Options Project and has included minimum competency testing as part of their review. Issues surrounding "teacher competencies" have drawn attention at the National Association of Retarded Citizens, but NARC has not focussed on competencies of mentally retarded students or how they can or should be assessed. None of the organizations to date have adopted final policy positions or developed policy guidance for their members.

The time is ripe for the broad spectrum of federal agencies, professional organizations and public interest groups to undertake a leadership role to bring to public attention the potential as well as the pitfalls of including handicapped students in minimum competency programs. At the very least the following steps should be considered:

(1) Gathering evaluation of special education programs and experience relevant to testing of handi-

capped students to determine the appropriateness of including handicapped students in regular minimum competency programs or the need for developing special competency tests for these students;

(2) Surveying state and local constituents to determine the nature and extent of any difficulties handicapped students are experiencing arising out of minimum competency tests;

(3) Assessing the possible impact on the education of handicapped students of disparities among state programs and also between state policy and local practice;

(4) Conducting an indepth and comprehensive legal analysis of the application of P.L. 94-142, Section 504 and selected state mandates to minimum competency testing. Such an analysis at a minimum should address the following questions:

(a) Can any student be denied the opportunity to participate or be forced to participate in minimum competency programs?

(b) Can any student or groups of students automatically be exempt from the programs? If not, are there some students for whom the goals of reading, writing and computation are out of the question?

(c) Can separate standards for certain students be justified under the law?

(d) To what extent and in what way should minimum competency testing programs conform to the evaluation and placement procedures required by P.L. 94-142 and Section 504?

(e) To what extent is it adequate and appropriate to leave the determination of participation and differential assessment procedures and standards for handicapped students to the evaluation team and the IEP process required by P.L 94-142?

(f) Is completion of an IEP considered adequate or appropriate as the sole requirement for handicapped students to graduate from high school?

Given the current dearth of written information and analysis about minimum competency testing and handicapped students, opportunities to exchange experience and views about state and local policies and practices should be

fostered between state and local decisionmakers involved in developing minimum competency programs and education officials making policy at the federal level. These exchanges could generate materials and technical resources about how problems identified can be prevented or resolved, as well as serve to alert parents, citizens, education professionals and other federal, state and local officials of the issues involved.

Within a few years, nearly every state in the nation will have instituted some variation on the basic skills and competencies testing theme. Potential harmful or helpful consequences for handicapped students so far have been left unexamined. The time for serious consideration of how this sweeping educational change affects handicapped students is overdue.

--Ann Rosewater

FOOTNOTES

1/ P.L. 94-142, The Education for All Handicapped Children Act of 1975 is codified at 20 U.S.C. Sec. 1401 et seq., and its implementing regulations at 45 C.F.R. Part 121a.

2/ Section 504 of the Rehabilitation Act of 1973, as amended is codified at 29 U.S.C. 794 and its implementing regulations at 45 C.F.R. Parts 81 and 84.

3/ C. Candor-Chandler, "Charleston, West Virginia: Competency requirements for special education students", Phi Delta Kappan, V. 59, No. 9, p. 611, May 1978.

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4/ Arizona, California, Colorado, Connecticut, Florida, Idaho, Indiana, Kansas, Kentucky, Louisiana,

Maryland, Massachusetts, Missouri, New York, North Carolina, Oregon, South Carolina, Vermont, Virginia, West Virginia.

5/ California, Colorado, Florida, Kansas, Louisiana, Maryland, Masschusetts, Missouri, North Carolina, Oregon.

6/ The NASDSE survey is apparently the only empirical research which has been conducted to determine how state minimum competency programs take into account students with special needs. However, it covers only the most basic questions and does not define the terms it uses. There is a clear need for additional research based on actual interviews with state and local officials, parents and advocates which would raise a broader range of policy questions and identify problems and variations in practice at the local level.

7/ 45 C.F.R. Sec. 121a. 340-349.

8/ 45 C.F.R. Sec. 84 34 and 121a. 306, 550-556.

9/ Kennedy (1978) questions: "Can minimum competencies needed by a "fortunate" student who is physically healthy, enters school with above average intelligence and has upper middle-class parents with a "less fortunate student" who is physically and mentally disabled and from a working-class family.

10/ NASDSE, p. 5.

11/ The State Board of Education policy recently adopted in Massachusetts is a case in point. A spokesperson for the Division of Special Education reported that the Massachusetts policy allows local districts to continue their past practice of excluding special needs students from all standardized testing rather than assuring that the students either participate, in an appropriate fashion, in the new proficiency testing program or are evaluated on an alternative set of competencies through appropriate means.

12/ Larry P. v. Riles, 343 F. Supp 1306 (N.D. Cal. 1972), affirmed, No. 72-2509 (9th Cir. August 16, 1974); Diana v. State Board of Education, No. C-7037 RFP (N.D. Cal., filed February 3, 1970, Consent decision dated May 24, 1974); Guadalupe Organization v. Tempe Elementary School District No. 3, No. 71-435 PHX (D. Ariz. May 9, 1972); Mattie T. v. Holladay, C.A. No. D.C.-75-31-S(N.D. Miss.,) consent decree February 22, 1979.

13/ 45 C.F.R. 121a.5 (b)(9); 121a. 540-543.

14/ 45 C.F.R. 121a.500.

15/ 45 C.F.R. 84.35(a).

16/ 45 C.F.R. 121a.530(b).

17/ Florida State Department of Education "Statewide Assessment Results by Demographic Categories: Fall, 1977, Tests", (mimeo); State of Florida Department of State Florida Statewide Assessment Program: Special Assessment for the Visually Impaired 1977-78, (1978) "One out of six fail exit exam in North Carolina", The Measuring Cup. Publication of Public Information and Research Services, Inc. Savannah, Georgia. Vol. 1, No. 2, February-March, 1979, p. 9-10.

18/ HEW, Office for Civil Rights, Elementary and Secondary School Civil Rights Survey: State and National Totals, 1976, unpublished (mimeo), 1978.

19/ 45 C.F.R. 84.35(b)(1) and (3) and 121a.532(a) and (c).

20/ Griggs v. Duke Power Company 401 U.S. 424 (1971).

21/ States surveyed which offer some differential assessment or modification include Florida, Idaho, Louisiana, North Carolina. Denver, Colorado and Kanawha County, West Virginia, also indicate that they provide accommodations; several other states give discretion to local districts to make modifications.

22/ 45 C.F.R. 84.35(b)(2) and 121a.532(b).

23/ California, Florida and North Carolina have some basic documents. However, state and local officials in California stressed the need for more detailed materials and on-site training. NASDSE indicates that California was due to issue a "technical assistance paper...for use in administering competency tests to handicapped students" by early 1979.

24/ California, Kansas, Oregon.

25/ 45 C.F.R. 121a.340-349.

26/ Kansas, Massachusetts, Missouri, Vermont.

27/ Vermont; see also J. Stewart, G. Bauman, R. Falco, W. Hanson, L. Judy, Community Competencies for the Handicapped: School Graduation Requirements-A Basis for Curriculum and IEP Development, Springfield, Illinois: Charles C. Thomas, Publisher, 1978.

28/ Idaho.

29/ Massachusetts, Missouri.

30/ The Commonwealth of Massachusetts, State Board of Education, "Policy on Basic Skills Improvement", Final Approval: August 29, 1978.

31/ Fenton (1978) raises three questions regarding notice: (1) "what provisions does the school make for informing parents and the child, when appropriate, that the contents of the IEP will determine the child's eligibility or preparation for the competency testing program?" (2) "does the school make available to the parents (and the child) a list of the competencies included in the testing program and their child's IEP?" and (3) "are parents advised about the implications for their child's future education opportunities and employment prospects if the IEP does not address the districts' competencies?".

32/ Southeastern Public Education Program, American Friends Service Committee, A Citizens' Introduction to Minimum Competency Programs for Students, Columbia, South Carolina, April 1978, pp. 8-9.

33/ See also Fenton (1978) for a perspective on how IEPs which diverge from the goals and objectives of the regular education (and, on the assumption that instructional validity is secure, also minimum competency programs) may place a burden to show cause on the planning team.

34/ McClung and Pullin, p. 10.

35/ NASDSE, p. 2. According to New York Times reporter Edward B. Fiske, the New York State Board of Regents voted to allow "certificates to be awarded to retarded students who successfully complete 'an appropriate individualized education program'" despite overwhelmingly rejecting a proposal to give "certificates" to students who complete their course work but fail to pass the new minimum competency test (New York Times, March 2, 1979).

36/ Idaho, Oregon, and other states which provide local discretion.

37/ See pages 4-5 above.

38/ 45 C.F.R. 84.4(b)(2).

39/ The Policy Options Project of the Council for Exceptional Children has in draft a paper laying out the broader issues in grading, testing and exit requirements as they affect handicapped students, including minimum

competency testing as one aspect. For further information, the reader is referred to Scottie Torres Higgins, Council for Exceptional Children, Reston, Virginia.

40/ Internal Memorandum from Director, Office for Civil Rights, Department of Health, Education and Welfare to Al Hamlin, Mel Leventhal and Michael Middleton, June 12, 1978.

41/ Danielson (1978), Fenton (1978), Kennedy (1978), Morrisey (1978), Safer (undated).

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PERSONS INTERVIEWED FOR THIS REPORT

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Eugene Black, Division of Special Education, California State Department of Education.

William Brown, National Association of State Boards of Education.

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Bill Schipper, National Association of State Directors of Special Education.

Paul Smith, Children's Defense Fund.

Jerry Stanley, Garden Grove School District, California.

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John Wodatch, U.S. Office for Civil Rights.

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